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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

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EASTERN DISTRICT OF CALIFORNIA

9 In re) Case No. 09-27153-E-13
10 GIL MARIANO RAPOSO and)
11 JOANNE CAROL RAPOSO,)
12 Debtors.)
13 GIL MARIANO RAPOSO and) Adv. Proc. No. 15-2095
14 JOANNE CAROL RAPOSO,) Docket Control No. RHS-1
15 Plaintiffs,)
16 v.) DATE: September 24, 2015
17 OCWEN LOAN SERVICING, LLC and) TIME: 1:30 p.m.
18 ONEWEST BANK, FSB,) DEPT: E
19 Defendants.)

ORDER TO APPEAR RE ATTORNEY REPRESENTATION

21 In this Adversary Proceeding, Gil Mariano and Joanne Raposo
22 ("Plaintiff-Debtor") sued both OneWest Bank, FSB and Ocwen Loan
23 Servicing, LLC for the failure to reconvey a deed of trust
24 following the completion of the Chapter 13 plan and payment in full
25 of the allowed secured claim for which the deed of trust was
26 collateral. Neither Ocwen Loan Servicing, LLC nor OneWest Bank,
27 FSB responded to the complaint or filed any opposition to entry of
28 the default judgments against each of them.

1 In *Raposo v. Ocwen, et al.*, the court perceives that the need
 2 to sue both Ocwen Loan Servicing, LLC and OneWest Bank, FSB was
 3 caused by the documents filed in the *Raposo* bankruptcy case.
 4 Bankr. E.D. Cal., Case No. 09-27153. In the *Raposo* bankruptcy
 5 case, Proof of Claim No. 7 was filed on May 27, 2009, by OneWest
 6 Bank, FSB. On September 4, 2015, a Notice of Transfer of Claim was
 7 filed stating that the claim of OneWest Bank, FSB had been
 8 transferred to Owen Loan Servicing, LLC. Case No. 09-27153, Dckt.
 9 96. No copies of any transfer documents were attached to the
 10 Notice and no amended Proof of Claim No. 7 setting forth Owen Loan
 11 Servicing, LLC standing as a creditor had been filed. The
 12 Certificate of Service for the Notice of Transfer of Claim did not
 13 provide notice to OneWest Bank, FSB that Owen Loan Servicing, LLC
 14 asserted that OneWest Bank, FSB was no longer the creditor and that
 15 Owen Loan Servicing, LLC has obtained all of the rights held by
 16 OneWest Bank, FSB for the debt upon which Proof of Claim No. 7 was
 17 based. The Notice of Transfer in the *Raposo* bankruptcy case was
 18 signed by attorney Audrey J. Dixon (Fla. Bar No. 39288), of the
 19 Robertson, Anschutz & Schneid, PL law firm, as the attorney for
 20 Ocwen Loan Servicing, LLC.

21 The Plaintiff-Debtor set for hearing two motions for entry of
 22 defaults judgments; one against Ocwen Loan Servicing, LLC and the
 23 other against OneWest Bank, FSB. The hearings for the two motions
 24 were scheduled for August 27, 2015. Having provided at least
 25 twenty-eight days notice of the hearing, written oppositions were
 26 required to be filed at least fourteen days prior to August 27,
 27 2015. Local Bankruptcy Rule ("LBR") 9014-1(f)(1).

28 On August 25, 2015, at 4:00 p.m., a Stipulation to Continue

1 Hearing was filed. Dckt. 21. The Stipulation is purported to have
2 been executed between Plaintiff-Debtor, Ocwen Loan Servicing, LLC,
3 and OneWest Bank, FSB. The Stipulation is executed for Ocwen Loan
4 Servicing, LLC and OneWest Bank, FSB by Nichole L. Glowin, Esq., of
5 the Wright, Finlay & Zak, LLP law firm. This would be the first
6 appearance in the Adversary Proceeding by Ms. Glowin or any
7 attorney for the Wright, Finlay & Zak, LLP law firm for either
8 Ocwen Loan Servicing, LLC or OneWest Bank, FSB.

9 On the morning of August 27, 2015, when the court became aware
10 of the Stipulation, the courtroom deputy for Department E called
11 both Peter Cianchetta, attorney for Plaintiff-Debtor, and Nichole
12 Glowin. The message was left for both that the matter had not been
13 continued by the court, as there were some issues for the attorneys
14 to address. Telephonic appearances were available for both
15 attorneys and the court pre-notified CourtCall (the telephonic
16 appearance service) that the court authorized day-of-the-hearing
17 addition of either attorney (or other attorney from their
18 respective firms).

19 When the court called the two motions on the 1:30 p.m.
20 calendar, Mr. Cianchetta appeared in court. No appearance was made
21 by Ms. Glowin or anyone from her firm to address the request to
22 continue the hearing and the questions of the court.
23 Mr. Cianchetta stated that he had spoken with Ms. Glowin about the
24 court not having continued the hearing based on the Stipulation.

25 The court's concerns are stated on the record and available
26 for Ms. Glowin, the purported counsel for both OneWest Bank, FSB
27 and Ocwen Loan Servicing, LLC. The basic issue the court was
28 seeking to address was whether the Wright, Finlay & Zak, LLP law

1 firm had been engaged by officers of both OneWest Bank, FSB and
2 Ocwen Loan Servicing, LLC, or whether Ocwen Loan Servicing, LLC had
3 engaged the law firm's services, representing that it had a power
4 or other authorization that allowed it to act for OneWest Bank,
5 FSB.

6 The court's concerns relate to conduct of Ocwen Loan
7 Servicing, LLC in other cases in which it has misidentified itself
8 as the "creditor," has failed to identify the actual creditor when
9 requested by consumer counsel, and has refused to comply with
10 Bankruptcy Rule 2004 subpoenas.

11 The fact that counsel purporting to represent Ocwen Loan
12 Servicing, LLC and OneWest Bank, FSB failed to appear at the
13 August 27, 2015 hearing when such counsel had been advised that the
14 court was conducting the hearing raises additional concerns. Such
15 counsel was seeking to have the hearings continued but was
16 unwilling to attend the hearing to address any questions the court
17 has concerning such a continuance.

18 The court honored Plaintiff-Debtor counsel's word that
19 Plaintiff-Debtor agreed to continue the hearings. The hearings
20 have been continued by separate order of the court.

21 In light of the inconsistent statements made by Ocwen Loan
22 Servicing, LLC in the Plaintiff-Debtor's bankruptcy case, the
23 inconsistent statements in other bankruptcy cases and failure to
24 respond to Rule 2004 subpoenas (which issues are being addressed
25 through a separate order to show cause being issued by the court),
26 the purported counsel for OneWest Bank, FSB and Ocwen Loan
27 Servicing, LLC failing to appear at the August 27, 2015 hearing
28 that they sought to have continued, and good cause appearing;

1 **IT IS ORDERED** that the court shall conduct a hearing regarding
2 attorney representation at **1:30 p.m. on September 24, 2015**, in
3 Department E of the United States Bankruptcy Court, 501 I Street,
4 Sixth Floor, Sacramento, California.

5 **IT IS FURTHER ORDERED** that Nichole L .Glowin, Esq., of Wright,
6 Finlay & Zak, LLP, as the attorney who filed the Stipulation to
7 Continue purportedly for OneWest Bank, FSB and Ocwen Loan
8 Servicing, LLC, and Peter CIanchetta, attorney for Plaintiff-
9 Debtor, shall each appear at the September 24, 2015 hearing. No
10 telephonic appearances are permitted for any attorneys attending
11 the hearing, including any other attorneys from the Wright, Finlay
12 & Zak, LLP who may choose to appear with Ms. Glowin or "monitor"
13 the hearing.

14 **IT IS FURTHER ORDERED** that Nichole L Glowin and Wright Finlay
15 & Zak, LLP shall file on or before **September 17, 2015**, a written
16 Response, supported by credible, admissible evidence, identifying
17 the representatives of Ocwen Loan Servicing, LLC and the
18 representatives of OneWest Bank, LLC with which they communicated
19 with about serving as attorneys for those respective parties and
20 who the persons were that agreed to engage the services of Wright,
21 Finlay & Zak, LLP to represent Ocwen Loan Servicing, LLC and to
22 represent OneWest Bank, FSB.

23 **IT IS FURTHER ORDERED** that Wright Finlay & Zak, LLP shall
24 include with its Response a copy of the fully executed engagement
25 letter with Ocwen Loan Servicing, LLC and the fully executed
26 engagement letter with OneWest Bank, FSB (each redacted as
27 appropriate) for the legal services to be provided to each of the
28 two named defendants in connection with this Adversary Proceeding.

1 If such engagement was based on a power of attorney being asserted
2 by either Ocwen Loan Servicing, LLC or OneWest Bank, FSB, a copy of
3 that power of attorney shall be included with the Response
4 (redacted as appropriate).

5 Dated: September 4, 2015

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8 RONALD H. SARGIS, Judge
9 United States Bankruptcy Court
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Instructions to Clerk of Court

Service List - Not Part of Order/Judgment

The Clerk of Court is instructed to send the Order/Judgment or other court generated document transmitted herewith *to the parties below*. The Clerk of Court will send the Order via the BNC or, if checked , via the U.S. mail.

Debtor(s), Attorney for the Debtor(s), Bankruptcy Trustee (if appointed in the case),
and XX Other Persons Specified Below:

Office of the U.S. Trustee
Robert T. Matsui United States Courthouse
501 I Street, Room 7-500
Sacramento, CA 95814

Peter L. Cianchetta
8788 Elk Grove Blvd., Ste. 2A
Elk Grove, CA 95624

Nichole L. Glowin
4665 MacArthur Court, #280
Newport Beach, CA 92660

CIT Bank, N.A.
Attn: Officer - Legal Notice
888 E. Walnut
Pasadena, CA 91101

CIT Bank, N.A.
c/o CT Corporation Systems - Legal Notice
818 West Seventh Street, Ste. 930
Los Angeles, CA 90017